

FILED**NOT FOR PUBLICATION****JUN 06 2005****UNITED STATES COURT OF APPEALS****CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS****FOR THE NINTH CIRCUIT**FILED
Clerk
District Court**AUG 15 2005****EMERENCIANA PETER-PALICAN,**

Plaintiff - Appellant,

v.

**COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS;
THE GOVERNOR'S
DEVELOPMENTAL DISABILITIES
COUNCIL; MATILDA ROSARIO,
Director of Personnel; THOMAS J.
CAMACHO, Individually and as
Executive Director of the Governor's
Developmental Disabilities Council,**

Defendants - Appellees.

No. 02-16765

For The Northern Mariana Islands
By _____

D.C. No. CV-00-00024

(Deputy Clerk)

MEMORANDUM***EMERENCIANA PETER-PALICAN,**

Plaintiff - Appellee,

v.

**GOVERNMENT OF THE
COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS;**

No. 02-16796

D.C. No. CV-00-00024-ARM

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

**THE GOVERNOR'S
DEVELOPMENTAL DISABILITIES
COUNCIL; MATILDA ROSARIO,
Director of Personnel,**

Defendants,

and

**THOMAS J. CAMACHO, Individually
and as Executive Director of the
Governor's Developmental Disabilities
Council,**

Defendant - Appellant.

Appeal from the United States District Court
for the District of the Northern Mariana Islands
Alex R. Munson, Chief Judge, Presiding

Argued & Submitted May 12, 2005
Honolulu, Hawaii

Before: **D.W. NELSON, KOZINSKI and CALLAHAN**, Circuit Judges.

1. Taking the evidence in the light most favorable to the plaintiff, the jury could have believed that Camacho retaliated against Peter-Palican by manufacturing negative performance evaluations. A reasonable person in Camacho's position would have known that such conduct was unlawful.

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Therefore, Camacho is not entitled to qualified immunity. See Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982); Hope v. Pelzer, 536 U.S. 730, 741 (2002).

2. Civil service employment in the Northern Mariana Islands is held by statute, see Dyack v. N. Mariana Islands, 317 F.3d 1030, 1033 (9th Cir. 2003), not by contract. There was thus no contract to which a covenant of good faith and fair dealing could attach, and Peter-Palican is not entitled to damages for breach of any such covenant.

3. The district court did not abuse its discretion in holding that the declaration of juror Castro could not be considered. See Fed. R. Evid. 606(b); Fed. R. Civ. P. 60(a).

AFFIRMED.

